Supreme Court, U.S.
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# 92-1884

File No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

WARREN E. NELSON,

Petitioner,

V.

MONICA J. CARLSON, ET AL,

Respondents.

On Petition for Writ of Certiorari
to the Minnesota
Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Counsel of Record is

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71 pp

(a) Questions

Question #1. Are Minnesota Statutes, Chapter 518 and specifically 518.06, the "No Fault" divorce law as practised, unconstitutional and repugnant to the U.S. Constitution as a violation of this petitioners federal rights to due process (substantive and procedural) and equal protection because the law abolishes all defenses to marriage dissolution which bleeds into all issues in divorce case?

Question #2. Can petitioner maintain this suit for damages from private parties under U. S. C. 28-1343, 42-1983, 42-1985 as a harmed "white male person" claiming fraud and conspiracy against him and intentional denial of due process (substantive and procedural) and equal protection?

(b) Petitioner & Respondents Repre-

sentatives Served.

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(d) Minnesota Sixth Judicial Trial Court, the Minnesota Court of Appeals and the Court of last resort the Minnesota Supreme Court. These rulings in the appendix

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(e) The trial court and Minnesota Court of Appeals did not rule on the specific constitutional validity of the law in question (Chapter 518 & M. S.A. 518.06) as applied to petitioner in application, administration and enforcement under the U.S. Constitution effecting due process and equal protection rights. The Minnesota Supreme Court decision did not rule on constitutionality, this only affirmed the appellate court decision. The operation of these laws is repugnant to the U. S. Constitution.

(i) February 12, 1993 of the Minnesota Supreme Court.

(IV) U.S. C. 28-1257. State Courts Certiorari.

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority excercised under the United States.

(f) U.S. first amendment, U.S. fourth amendment, U. S. ninth amendment and U. S. fourteenth amendment, U. S. C. 28-1343, U. S. C. 42-1983, U. S. C. 42-1985. Minnesota bill of rights and M.S.A. 518, 518.06 and 518.145.

Appendix U.S. first, fourth, ninth & fourteenth amendments pp 58 - 60

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M.S.A. 518.1, 518.06, 518.145 subd. 1 & 518.145 Subd. 2 pp 50-55

(g) Statement of the Case

This case was started seeking state and federal constitutional rights denied in a marriage dissolution with a question on U. S. 14th Amendment due process and equal protection. Minnesota dissolution law(518.06 app. pp 50 - 52 )abolishes all defenses and therefore allows the state legal system unlimited power to regulate divorce. This is wrong. My claim is that the parties therefore cannot litigate on equal footing so due process and equal protection are denied by the so called "no fault" divorce law, to this petitioner.

The most sacred relationship is destroyed by the state without regard for the innocent party.

This case also contains numerous ethics violations by adversarial attorney that has a discriminatory effect

Also, the most sacred relationship with my son Andrew is brutally destroyed by the state legal system by the use of this law, all defenses abolished. The "best interests" of the child is of no regard to the local court and my adversaries. This action super empowers my adversaries and destroys attempts at bargaining for maintenance of this sacred relationship with my son. My complaint is also that the state court system should not be allowed unlimited power in the regulation of the "no fault" divorce law.

This states <u>unlimited power</u> to regulate divorce courts and laws unnecessarily destroys families, association with children and the innocent parties U.S. Constitutional rights. This case is a request that petitioners U.S. 14th Amendment rights be protected.

Substantial allegations of intentional fraud and conspiracy existed between the private parties and judges listed to do this petitioner emotional and financial harm. Allegations that the rule of law did not prevail in this judicial district and that substantial deprivations of petitioners U.S. Constitutional rights to due process(substantive and procedural) and equal protection prevail. Petitioner requested a jury trial and damages for deprivations of rights to equal custody and property rights and the trumatic stress and hospitalization caused by the abuse of the law and unequal protection in application,

administration and enforcement of the law.

A neutral judge was not assigned as requested. Judgments were made on exparte hearings. Rush to judgment was made without competent evidence taken or evidentiary hearings for supervised visitation. Full, fair meaningful pre trial was denied on accounting for property and fidelity of affidavits. The judge refused truthful testimony on incomes of the parties to the action. At trial, the judge refused to take evidence of fraud (M.S.A. 518.145) and false statements made by my adversaries. This petitioners right to competent attorneys is denied by prejudicial rules issued by the judge on these issues.

This petitioner filed a timely amendment to the claim, defining

examples of U.S. due process and equal protection denials and abuse of the law claiming the state provides no defenses or discretionary standards that would protect this petitioners fundamental liberty and property rights when all defenses are abolished (518.06).

The state provides no protection of this petitioners privacy and security rights in my own home before the dissolution, because no defenses are allowed. Then the state provides privacy and security for my exspouse upon her filing for dissolution. The judge refused to hear the privacy and fraud issues as a defense. The judge refused competent evidence to rule on these issues.

The State Supreme Court knows of the problems because Chief Justice

Keith testified at a Minnesota Senate Judicial hearing(at which I was present) on November 4, 1991 and there he stated, "that Chapter 518 has problems but he believed they can be fixed." This statement led this petitioner to believe that it would be proper to seek a remedy for the harm done to me and the excessive burdens applied to me.

This petitioner presented competent evidence (bank records) in the dissolution and in this case that my exspouse stated she earned one thousand nine hundred ninety dollars($1,990.00) in 1988 and then she spent over thirteen thousand dollars($13,000.00) in 1988 from her own checking account(not on household needs) and stated(in an affidavit) that this petitioner

never gave her any money. The judges refused this competent evidence for consideration when they ruled. These judicial actions promoted rulings without foundation and resulted in invidious discrimination by the state officials.

Therefore this petitioner filed this action as a U. S. Constitutional rights claim with a Federal question and a question of the law validity as applied to me.


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(h) Case was initiated by petitioner. Opposing parties moved for dismissal. At the same hearing, petitioner moved for summary judgment under Minnesota Statute 555 for declaratory judgment on the issues. Trial Court stated that this petitioner had no claim for relief against private parties for damages and did not rule on constitutional question. Petitioner filed for and appealed in Appellate Court. Appeals Court denied oral argument in Court of Appeals. Petitioner believes that questions and issues were timely and properly raised. Minnesota Court of Appeals affirmed trial Court ruling and did not rule specifically on constitutionality of M.S.A. Chapter of 518 and 518.06 as specifically applied to this petitioner. The Appeals Court ruled in opinion that Statutes

are presumptively Constitutional. Statutes(plural) ruling is not a ruling specific as to 518 and 518.06 in its application, administration and enforcement.

Petitioner petitioned Minnesota Supreme Court for discretionary review, Supreme Court denied petition and therefore affirmed Court of Appeals ruling. None of the State Courts, trial, appeals and Supreme Court addressed due process or equal protection under the law. These courts have not fully addressed the conspiracy and fraud that has caused this petitioner trumatic stress and harm physically and emotionally. This case was last adjudicated by the state in the Minnesota Supreme Court. Federal questions were presented to all courts on proper papers and briefs. The state of

Minnesota has never specifically handled the U. S. Constitutional rights question presented in this case. The highest state court has never specifically decided the U.S. or State constitutionality of application, administration and enforcement of M.S.A. 518 and 518.06. Petitioner believes these facts give jurisdiction to review to the U.S. Supreme Court.

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**ARGUMENT**

(j) This action was initiated as an individual's complaint that the state court system denied due process(substantive and procedural) and equal protection and that this did not harmonize with the federal Consitution in application, administration and en-

forcement as applied to this petitioner. A general all inclusive ruling that statutes are presumed constitutional should not stand when challenged and legislators expect the courts to handle constitutional questions. The trial court, Appeals Court and State Supreme Court did not specifically answer this question. The state of Minnesota did not accept the burden of allowing petitioner to challenge the statutes' constitutionality. This causes excessive burdens on petitioner. Therefore this writ should be allowed.

This question has become political by the Women's Coalition, the Bar Association and the legislature; therefore this writ should be allowed at the U.S. Supreme Court level for impartial review because justice is not available in state court.

The state will not allow a lawsuit for conspiracy and damages by this

party to protect his federal rights to due process and equal protection in state court when it is timely filed, no matter how much fraud app.pp 53-55 and misrepresentation has prevailed against petitioner. Federal and state court allegations denying due process and equal protection as claimed by this petitioner are enclosed in appendix - pp 64 - 66 . Therefore this writ should be allowed because these important issues and questions have not been fully decided by the state court of last resort.

The state attorney general's office did not defend the constitutionality of the defenses abolished app.- pp 50 - 52 518.06 and Chapter 518 laws. The legislature stated that, "the courts handle constitutional questions". It is not the legislators responsibility to pass absolutely constitutional law.

This petitioner contacted 201 legislators by mail. Some stated they thought the State Supreme Court should handle the question. The attorney general did not defend constitutionality of the law in court or in briefs. The current Chief Justice of the Minnesota Supreme Court stated that "518 has problems but they can be fixed" to the 1991 Senate Judicial Commission, at which I was present. The State Courts, to the court of last resort did not specifically pass on the constitutionality of Chapter 518 and 518.06. State government appears to not work, it fails in this case. This is grounds to request allowance of this writ.

While state wide and nationally a rash of suicides, murders, double murders and suicides and domestic abuse occurs - the higher courts of Minnesota

chose to stonewall the issue of excessive burdens applied to petitioner and father. Men in Minnesota know that when threatened with divorce - they will lose their right to dream, they will lose their right to emotions, lose in an unfair court and lose the U. S. Constitutional right to due process and equal protection of fundamental liberty and property rights.

The issue of fair laws and level playing field in court are basic to public safety and confidence in our courts, yet the Minnesota highest courts refuse to address this issue. The state courts are fostering abuse of the law by litigants and attorneys. By not correcting the applied law, the state courts foster domestic abuse. The crimes stated as a public safety issue, indicates the truamatic stress and emotions caused by negligent hand-

ling of the divorce issues. The law should grow to promote a more level playing field in Court.

When the activities of the state & laws and government are questioned - the officials get mad and vindictive. When this petitioner filed this suit the attorney generals office intimidated me by stating that my address and zip code was the Minnesota State Penitentiary at Stillwater, Minnesota. I just questioned the law and its administration, application, and enforcement against me. Are we supposed to pick up guns and enforce our rights or should we use the judicial system? These people (judges and attorney general) don't want to answer any questions or assist in a remedy. No wonder there is excessive violence in our area. The law cannot grow, as these officials operate their office.

The attorneys practice of unrestrained abuse of the law is permitted by Judicial officers in Duluth, Minnesota against this Petitioner. The courts and the law allows connivance in a total civil suit, to remove due process and equal protection federal rights; this is wrong and repugnant to the U.S. Constitution. The "not limited to" statement in the State law(518.06) deregulates the judicial system on dissolution and therefore violates the U. S. Constitution. It is not proof of being an intelligent attorney when ways are found to practice abuse of the dissolution law.

A recently retired Chief Justice of the U.S. Supreme Court stated that "huckster" and "shyster" attorneys are destroying the legal system.Ethics of attorneys in this case did destroy my federal rights.

The attorneys abuse of the law is by telling his(Mr. Butler) client that she must make strong false allegations so that the judge will be on her (my exspouse) side in the proceedings. I asked my wife why she made all those false allegations when we were out to supper one night. She stated that Mr. Butler told her that strong allegations are necessary.

This petitioner had excellent rapport with my son. He asked me how he could help get equal custody? When I was taking him to his mother, he would say, "go slow dad, and then whimper". This child has been unnecessarily hurt by the state government. Children and fathers have no 14th Amendment rights.

The higher courts of the state allow abuses of the law by attorneys. This is repugnant to U.S. Constitution and is grounds to request this Writ by this Pro se litigant.

In Duluth, the judges demand that attorneys control their clients and clients issues so that custody and fraud are not brought into their courts. We have a U. S. constitutional right to competent representation. When we legally push these issues into court - the judge punitively punishes the client and makes the representing attorney useless. When my attorney argued in court that "I had a U.S. Constitutional right to" - at this point the judge put up his hand and refused to hear anymore - then the judge instantly issued a instant/oral order without foundation against this petitioner. This is because of ex parte discussions with this judge(Martin) before the hearing by the opposing attorney. This petitioners right to a meaningful hearing was violated. This deprivation of rights and conspiracy of

attorney and judge have violated petitioners U. S. Constitutional rights to equal protection and due process. The nexus of judges and attorneys created an unreasonable risk and burden to this petitioners fundamental U. S. Constitutional rights to child association and property in a civil action.

In a dissolution action, all the attorney and his client must state, is that there is an irretrievable breakdown in the marriage. Appendix - pp 50 This shall be supported by competent evidence. App. - pp 50 .

What I complain of is, that my exspouse and her brother and two sisters, is that they took power of attorney from their (well to do) mentally ill father and then they created the irretrievable breakdown by moving him into my home for care and support without a request of me or my consent. This removed my privacy

and security for my son and myself and my property for one and a half years. Then my exspouse filed for dissolution and of course stating irretrievable breakdown of the marriage with numerous false allegations of non-support and imagined criminal activities.

No competent evidence was provided by an evidentiary hearing or records or witnesses. This "white male" petitioner is not given equal protection for child custody or property in an action for dissolution in Minnesota. Over 88 per cent of women get custody of children in Minnesota, per Chief Justice Sandy Keith in Nov. 4, 1991 Judicial hearing.

This petitioner was compelled to go twenty six months without evidentiary hearing from 1988 to 1991 on financial and property issues and 16 months without evidentiary hearing on

supervised visitation when my exspouse only requested sixty days supervised visitation. These situations resulted from rulings made without foundation and deny due process to petitioner. See Eberly V. Eberly, Del. 1985, 489A. 2d 433.

Even if trial court had issued interim alimony order on genuine emergency basis, and was acting within ambit of its discretion in relying solely on wifes improper affidavit, it was clearly abuse of discretion and denial of husbands due process rights to allow interim award to remain in effect for twenty two months without any evidentiary hearing.

A temporary deprivation of rights is a deprivation of rights under the U.S. 14th Amendment. As custody issues are practiced here - the attorneys tell me - the mother must be a drunk in order to

lose custody. This is not in the "Best Interest of the child" when Joint Physical Custody is requested. This does not follow the law.

Practices of false allegations, fraud, misrepresentation of facts, entered in Court do not contribute to fair hearings, justice and equity under the U.S. 14th Amendment. Further, these practices do not contribute to the public good and public safety. The discriminatory effects of these practices are rampant in this distinct case.

See U.S. v. Texas Ed. Agency, C.A. Tex. 1972, 467 F. 2d. 848.

It is not necessary to prove discriminatory motive, purpose, or intent as a prerequisite to establishing violation of this clause when discriminatory effect is present. (per Wisdom, circuit judge, with the Chief Judge and

four circuit judges concurring and six judges concurring in result.

See Geisinger V. Voss, D.C. Wisc. 1972, 352 F. Supp. 104. When state law regulating divorce comes into conflict with this 14th Amend., then it is duty of federal courts to resolve conflict in favor of the Constitution.

In November, 1990, the Minnesota Supreme Court, in Re the Welfare of M. D.O., ruled that a mother who was found guilty by a jury of murdering her small child, shall not lose her parental rights of another small child. Therefore she got supervised visitation with this small child while in prison. This mother got due process and equal protection before the law in a divorce action. This fit father, a white male petitioner was not granted due process and equal protection before the law in a divorce action. This is another rea-

son this writ request should be allowed.

This petitioner deserves a remedy when an attorney and his client (my ex-spouse) use fraud, misrepresentation and unrestrained abuse of the law in court against this petitioner. Defenses abolished law was not intended to promote fraud and abuse of the law. The trial court refused to allow a testimony test of fraud and abuse of the law. The court ordered this petitioner to pay the same attorney that propelled fraud, abuse of the law and misrepresentation of facts against me in court. How does this petitioner afford or get due process and equal protection under these conditions? This would exceed petitioners resources. These are further reasons to request this Writ.

The state rule of court on evidence(Rule 102) is supposed to be applied in all state courts to promote

competent evidence, it is; "These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined!" Is this rule just for reading? This question is asked because the state of Minnesota judicial officers appear to not honor it. If this rule were applied, this petitioner would not be complaining of being intentionally denied due process and equal protection. Application of this rule would promote competent evidence and rulings with foundation. My exspouse and her attorney were super empowered by the court and it was futile and impossible to get a fair and meaningful hearing.

The power of the state to regulate

marriage dissolution is not unlimited. M.S.A. 518.06 law, defenses are abolished and not limited, is the failing point of dissolution law. The state is obligated to protect this petitioners U.S. Constitutional rights, and it does not protect them. The defenses abolished mind set of the legal system, corrupts the legal system and creates judicial dictators. This is because the state officials are not limited in their power to regulate dissolution because of the 518.06 law. Petitioner believes that the federal constitution was never meant to give this kind of power to the state of Minnesota over this petitioner. Petitioner believes that the state is limited in regulating dissolution on all issues by U.S. 14th Amendment. Therefore this challenge of the law to the manner that the law is administered, applied

and enforced and the belief that this is what makes the law unconstitutional as used by the state and its officials. The law(no defenses) was meant to only apply to the divorce of adult parties. It was not meant to apply(no defenses) to all issues (custody, property and fraudulent court papers and testimony).

[ See Loving V. Com. of Va. 1967, 87 S. Ct. 1817, 388 U.S.1, 18 L. Ed. 2d 1010.

Under this amendment, power of the state to regulate marriage is not unlimited. ]

Since the issues of divorce must occur during the marriage, the state is violating this Supreme Court ruling when the state refuses to hear and evaluate fault complaints by this petitioner. Fundamental rights, to get into a marriage, during the marriage are protected. It is time to regulate fundamental rights in a divorce action and protect litigants by

the U. S. Supreme Court.

Wherefore petitioner request the Court to Rule:

1. That this request for a Writ of Certiorari be allowed.

2. That Chapter 518 and 518.06 as applied, administered and enforced against this petitioner is unconstitutional and repugnant to the U. S. Constitution.

3. In the alternative, remand to the Minnesota Courts for Constitutional validity test as it was applied, administered and enforced against this petitioner.

4. That petitioner has the right to proceed with the suit for protecting federal rights and damages.

5. Further, on what the court would deem just and equitable.

Dated: 4-25-93 Warren E. Nelson

Warren E. Nelson, Pro se
6099 Jean Duluth Road
Duluth, MN. 55803

STATE OF MINNESOTA

IN SUPREME COURT

C1-92-1504

Warren E. Nelson,

Appellant

vs.

Monica J. Carlson, et al.,

Respondents,

Clure, Eaton, Butler, Michelson & Person Law Firm,

Respondent,

Minnesota Attorney General, et al.,

Respondents.

Office of Appellate Courts

Filed
Feb 12, 1993

ORDER

Based upon all the files, records, and proceedings herein, IT IS HEREBY ORDERED that the petition of Warren E. Nelson for further review be, and the same is, denied.

Dated: February 12, 1993.

BY THE COURT: /s/ Rosalie E. Wahl
Associate Justice

STATE OF MINNESOTA

IN COURT OF APPEALS

C1-92-1504

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Warren E. Nelson,

Appellant,

Monica J. Carlson, et al.,

Respondents,

Clure, Eaton, Butler, Michelson, & Person Law Firm,

Respondent,

Minnesota Attorney General, et al.,

Respondents.

ORDER OPINION

(District Court File No. C4-92600034)

Office of Appellate Courts
FILED
Dec 31, 1992

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Considered and decided by Klaphake, Presiding Judge, Lansing, Judge, and Fleming, Judge.*

BASED UPON THE FILE, RECORD AND PROCEEDINGS HEREIN, AND BECAUSE:

*Retired Judge of the district court, serving as judge of the Court of Appeals by appointment pursuant to Minn. Const. art. VI, & 2.

1. Appellant Warren E. Nelson and respondent Monica J. Carlson were married and had one child. In 1989, respondent Judge Martin issued a supervised visitation order. In 1991, respondent Judge Wilson entered a decree dissolving the marriage. Appellant did not appeal the judgment dissolving his marriage. Instead, he sued his former spouse, her attorneys, her brother, both judges and the state attorney general, alleging that they conspired to violate his constitutional rights. He sought an injunction requiring the judges and the attorney general to vacate the dissolution judgment. to order a new trial, and to convene a grand jury to investigate his civil rights complaints. Appellant also sought a declaratory judgment that Minn. Stat. & 518.06 was unconstitu-

tional and that he and respondent were not divorced. The trial court dismissed his complaint with prejudice, holding that he failed to state a claim for which relief could be granted because (1) he alleged no facts to support the conspiracy claim; (2) he indirectly attacked the 1991 judgment instead of appealing it; and (3) equitable relief was not warranted because appellant had an adequate remedy at law (the right to appeal) which he failed to use.

2. No written opinion need be prepared when the contents of the statement of this court's decision sufficiently explain our dispotition. Minn. R. Civ. App. P. 136.01, subd.1(a).

**IT IS HEREBY ORDERED:**

1. The trial court's dismissal with prejudice is affirmed. The re-

cord shows that the appellant has failed to set forth a legally sufficient claim for relief. Elzie v. Commissioner of Pub. Safety, 298 N.W. 2d 29, 32 (Minn. 1980). Moreover:

(a) Statutes are presumptively constitutional. State v. Hamm, 423 N.W. 2d 379, 380 (Minn. 1988). Appellant has failed to demonstrate beyond a reasonable doubt that the statute violated a constitutional provision. In re Tveten, 402 N.W. 2d 551, 556 (Minn. 1987).

(b) Appellant argues that the attorneys representing his ex-wife acted under the color of state law under 42 U.S.C.&1983. However, appellant fails to meet the two-part test for action under color of state law set forth in Luger v. Edmondson Oil Co., 457 U.S. 922, 930, 102 S. ct.

2744, 2750 (1982). Even though Minnesota licenses lawyers to practice law, lawyers do not act under color of state law for the purposes of 42 U.S.C. & 1983. See, e.g., Polk County V. Dodson, 454 U.S. 312, 318, 102 S. ct. 445, 450 (1981); Henderson v. Fisher, 631 F 2d 1115, 1119 (3rd Cir. 1980).

(c) Appellant did not appeal the final judgment through a motion or petition. Stumer v. Hibbing Gen. Hosp., 242 Minn. 371, 375, 65 N.W. 2d 609, 612 (1954). Therefore, appellant's complaint constitutes an impermissible attack on the March 21, 1991 final judgment.

(d) Appellant cannot be granted equitable relief where he has failed to exhaust his remedies at law. See U.S. Fire Ins. Co.v. Minnesota State Zoological Bd., 307 N.W. 2d 490, 497

(Minn. 1981)(if equitable relief were granted, statutory restrictions would be circumvented); Kingery v. Kingery, 185 Minn. 467 470, 241 N.W. 583, 584 (1932) (equity follows law and will not disregard statutory law or grant relief prohibited thereby). Appellant had a legal remedy at law under Minn. R. Civ. App. P. 104.01. He failed to use it. He shall not be accorded relief on another ground.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(b), this order opinion will not be published and shall not be cited as precedent.

Dated: December 30, 1992.

**BY THE COURT**

/s/ Judge William J. Fleming

STATE OF MINNESOTA SIXTH JUDICIAL DISTRICT

IN DISTRICT COURT

COUNTY OF ST. LOUIS CIVIL DIVISION

---

WARREN E. NELSON C4-92-600034

Plaintiff,

vs. ORDER FOR DISMISSAL

MONICA J. CARLSON, ET AL., WITH PREJUDICE

Defendants.

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The above entitled matter came on for hearing on April 4, 1992, in Duluth, Minnesota, upon a motion by Plaintiff for Summary Judgment and upon motions by all of the Defendants to dismiss with prejudice.

Plaintiff, Warren E. Nelson, appeared pro se.

Defendants Monica J. Carlson and Eric C. Johnson were represented by Ms. Barbara A. Miller, Attorney at Law.

Defendant Clure, Eaton, Butler,

Michelson, & Person Law Firm was represented by Joseph V. Ferguson, III, Attorney at Law.

Defendants Attorney General Hubert H. Humphrey, III, Judge Galen Wilson, and Judge Gerald Martin, were represented by Ms. Jocelyn F. Olson, Assistant Attorney General.

The Court having reviewed the pleadings and the affidavits filed by the parties, and having considered the briefs and arguments of counsel, now makes the following Order:

**IT IS HEREBY ORDERED:**

1. Plaintiff's motion for summary judgment is denied.

2. Defendants' motions to dismiss Plaintiff's complaints with prejudice is granted as to all Defendants.

3. Defendants are entitled to their costs and disbursements herein, to be taxed against Plaintiff.

4. The attached memorandum is incorporated herein and made a part hereof by reference.

Dated; June 4, 1992

/s/ John M. Roue, Judge

FILED IN MY OFFICE___O CLOCK___M.

JUNE 9, 1992. COURT ADMINISTRATOR

JOSEPH M. LASKY /s/Pearl Kasic
Deputy

30 DAY STAY PER RULE 125

**MEMORANDUM**

The marriage of Plaintiff Warren E. Nelson and Defendant Monica J. Carlson, formerly Monica J. Nelson, was dissolved by a Judgment and Decree entered on March 21, 1991. Eric C. Johnson is a brother of Defendant Monica J. Carlson and apparently testified during the dissolution proceedings. Judge Gerald Martin issued a supervised visitation order on November 17, 1989. Judge Galen Wilson issued the Judgment and Decree on March 21, 1991.

The Clure, Eaton, Butler, Michelson, Ferguson & Person Law Firm represented Monica J. Carlson in the dissolution proceedings.

Plaintiff alleges that Defendants conspired with each other to violate his constitutional rights. The allegations are merely conclusory and allege no facts to support Plaintiff's claim. The complaint therefore fails to state a claim upon which relief may be granted.

Plaintiff seeks injunctive relief against Judges Martin and Wilson and Attorney General Humphrey requiring them to vacate or modify the March 21, 1991 Judgment, order a new trial, and convene a grand jury to investigate his civil rights complaints. Plaintiff also seeks a declaratory judgment that Chapter 518 of the Minnesota Statutes is unconstitutional and that he and Defendant Monica

J. Carlson are not validly divorced. The complaint constitutes an impermissible direct attack on the March 21, 1991 Judgment and fails to state a claim for which relief may be granted.

Plaintiff seeks money damages from Defendants Monica J. Carlson, Eric C. Johnson, and the Clure, Eaton, Butler, Michelson, Ferguson & Person Law Firm, for alleged violations of his constitutional rights in the dissolution proceedings. The complaint constitutes an impermissible collateral attack on the March 21, 1991 Judgment and fails to state a claim for which relief may be granted.

Plaintiff is not entitled to equitable relief in respect to the provisions of the March 21, 1991 Judgment. He had an adequate remedy at law in his right to appeal that Judgment and neglected to avail him-

self of the opportunity. The time for appeal has expired and this Court has neither the authority nor the inclination to permit an appeal at this date.

Dated: June 4, 1992.

/s/ John M. Roue, Judge

518.10 REQUISITES OF PETITION.

The petition for dissolution of marriage of legal separation shall state and allege:

(g) In the case of a petition for dissolution, that there has been an irretrievable breakdown of the marriage relationship;

The petition shall be verified by the petitioner or petitioners, and its allegations established by competent evidence.

518.06 DISSOLUTION OF MARRIAGE: LEGAL SEPARATION: GROUNDS: UNCONTESTED LEGAL SEPARATION.

Subdivision 1. A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation does not terminate the marital status of the parties. A dissolution of a marriage shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.

A decree of legal separation shall be granted when the court finds that one or both parties need a legal separation.

Defenses to divorce, dissolution and legal separation, including but not limited to condonation, connivance, collusion,

recrimination, insanity, and lapse of time, are abolished.

Subd. 2. (Repealed, 1978 c 772 & 63)

Subd. 3. If one or both parties petition for a decree of legal separation and neither party contests the granting of the decree nor petitions for a decree of dissolution, the court shall grant a decree of legal separation.

**518.145 DECREE, FINALITY AND REOPENING.**

Subdivision 1. **Appeal.** A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. When entered, the findings of fact and conclusions of law may constitute the judgment and decree. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time

for appealing from that provision. A party may remarry before the time for appeal has run if it is not contested that the marriage is irretrievably broken or if a stipulation that the marriage is irretrievably broken is incorporated in the decree of dissolution.

Subd. 2. **Reopening.** On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, except for provisions dissolving the bonds of marriage, annulling the marriage, or directing that the parties are legally separated, and may order a new trial or grant other relief as may be just for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence

which by due diligence could not have been discovered in time to move for a new trial under the rules of civil procedure, rule 59.03;

(3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;

(4) the judgment and decree or order is void; or

(5) the judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

The motion must be made within a reasonable time, and for a reason under clause (1), (2), or (3), not more than one year after the judg-

ment and decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment and decree or order or suspend its operation. This subdivision does not limit the power of a court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a party not actually personally notified as provided in the rules of civil procedure, or to set aside a judgment for fraud upon the court.

TRIAL COURT COPY

CONDENSED COMPLAINT

That the defendants have participated in a specific manner in violating the Plaintiff's "civil rights". That Plaintiff, Warren E. Nelson, is a "white male person" whose equal protection of the law, right to free speech, due process (procedural and substantive) rights were and have been denied in and out of state court by actions of state officials and private parties named as defendants. The State of Minnesota has not allowed protection of plaintiff's "civil rights" in court and has allowed the defendants to exploit the plaintiff's "civil rights" as herein after is defined more specifically.

Plaintiff avers that to the best of his knowledge all of the defendants reside in the state of Minnesota and service of process is to them.

CAUSE OF ACTION

Plaintiff's Allegations:

Plaintiff alleges that a state and federal constitutional question arises in this "Civil Rights" complaint. Does a citizen, who is sued in state court, in a civil action; that is grounded in a state statute - "No Fault" - action (for which there is no defense that would enable the "estop" of this action), have the Minnesota and United States Constitutional right and privilege to demand of the state court and expect the highest order of protection of his fundamental "Civil Rights" (procedural, substantive, equal protection of the law and free speech) enforced by the application of the state and federal constitutions, amendments, laws, citations and rules as listed in attached allegations of jurisdiction, in this citizens defense in state court?

That the Sixth Judicial District Court officials, Judge Martin and Judge Wilson do not allow full, proper and Meaningful legal representation of this male litigant, with or without attorneys, who has been personally involved in divorce and custody matters as the statutes and rules of court allow. The rule of law does not prevail in this state Sixth Judicial District for this plaintiff.

Male gender invidious discrimination is applied by these state officers specifically against this plaintiff. This also is a persistent custom and usage of the laws on "white male persons" seeking custody of their children. This plaintiff is a "white male person".

U.S. Constitutional Amendments

1. Congress shall make no law respecing establishment of religion, or prohibiting the free existence thereof;

or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

IV. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

XIV. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

TITLE 28

Section 1343. (a) The District Court shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

(a) 1. to recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy men-

tioned in Section 1985 of Title 42;

(a) 2. To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(a) 3. To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(a) 4. To recover damages or to secure equitable or other relief under any act of Congress providing for the protection of Civil Rights, including the right to vote.

TITLE 42

Section 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes----------District of Columbia.

TITLE 42

1985 (3) Depriving persons of rights or privileges. If two or more persons in any State or territory conspire or go in disguise on the highway or on the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons of the

equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to all persons within such state or territory the equal protection of the laws; ------- in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occassioned by such injury or deprivation, against anyone or more of the conspirators.

COUNT ONE - FEDERAL EQUAL PROTECTION

2. M.S.A. Chapter 518 is unconstitutional as applied to the plaintiff for the following reasons:

3. The State's application, administration and enforcement of Chapter 518 of the Minnesota Statutes "No Fault" dissolution and legal separation law denies this plaintiff equal protection of the law because the family relationships, parenting and marriage are fundamental liberty rights of the most fundamental, intimate sacred kind and the state law abolishes all defenses.

4. Adjudication on an equal basis between the parties is not possible because abolishing defenses (M.S.A.518.06) makes respondents, such as this plaintiff powerless in state court. It takes two to get married, but only one to get a divorce. This is not equal protection.

5. The State of Minnesota injects

itself, as totally sovereign, into these protected zones of fundamental liberties and then abolishes defenses in court. This denies equal protection of the law to the plaintiff.

COUNT TWO - FEDERAL DUE PROCESS

6. Plaintiff is denied procedural and substantive due process of the law because under M.S.A. 518.06 defenses to dissolution and legal separation are abolished.

7. Plaintiff's rights to preserve father - son family relationship are all taken away by the state's denial of procedural and substantive due process in dissolution and legal separation issues. It would be the same if a person were charged in a criminal case and that person were presumed guilty and the only defense he could raise was to discuss what his punishment should be.

8, The Minnesota state law as it is

applied, administered and enforced, kills petitioners(Monica Carlson) obligation and responsibility to the marriage and parent - child(contesting parent) relationship when that party to a marriage decides they want to make a marital change, for whatever the reason, no matter how capricious. This is not due process of law since the respondent(Warren Nelson) must, in effect, litigate with one hand tied behind his back.

CASE LAW CITATIONS

See Moreno V. U.S. Dept. of Agriculture C.C. D.C. 1972, 345F. Supp. 310, affirmed 93 S.Ct. 2821, 412 U.S. 528 37 L. Ed. 2d 782.

States cannot in name of morality infringe rights of privacy and freedom of association in the home. See Wolf V. People of the State of Colo., Colo 1949, 69 S. ct. 1359,

338 U.S. 25, 93L. Ed. 1782.

This clause exacts from the states for the lowliest and most outcast, all that is implicit in the concept of ordered liberty, embracing all those rights courts must enforce because they are basic to a free society.

see Cox V. State of New Hampshire, N.H. 1941, 61 S ct. 762, 312 U.S. 569, 85 L. Ed. 1049.

"Civil liberties" as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.

see Bates V. City of Little Rock, Ark. 1960, 80 S. ct. 412, 361 U.S. 516, 4 L. Ed. 2d 480.

See Quilloin V. Walcott, Ga. 1978. 98 S. ct. 549, 434 U.S. 246, 54 L.

Ed. 2d 511.

Relationship between parent and child is Constitutionally protected. See Smith V. Reynolds, D.C. Pa. 1967, 277 Supp. 65, affirmed 89 S.ct. 1322, 394 U.S. 618, 22 L. Ed. 2d 600.

This clause prohibits state or instrumentality of state from invidious discrimination among its citizenry. U.S.C.A. Amendment 14 equal protection.

Allegations of conspiratorial action by persons acting under color of law to carry out a purpose in which both state officials and private persons joined stated a claim under this section.

Title 42 section 1983 U.S.C.A.

See Williams V. Field, C.A. Cal. 1969, 416 F. 2d 483.

This clause forbids (14th Amendment Equal Protection) unequal enforce-

ment of valid laws, if such unequal enforcement is product of improper motive.

See Paul V. Davis, KY. 1976, 96 S.ct. 1155, 424 U.S. 693, 47 L. Ed. 2d 405.

The procedural guarantees of this clause apply whenever the state seeks to remove or significantly alter interests comprehended within meaning of either "liberty" or "property". 14th Amendment U.S.C.A.

See Carey V. Population Services, Intern N.Y. 1977, 97 S.ct. 2010, 431 U.S. 678 52 L. Ed. 2d 675.

When state burdens exercise of fundamental right, its attempt to justify that burden as a rational means for accomplishment of some significant state policy requires more than unsupported assertion that burden is connected to such policy. (per Mr. Justice Brennan with three jus-

tices concurring and three justices specially concurring). 14th Amendment.

See Johnson V. Robinson D.C. III. 1967, 296 F. Supp. 1165, affirmed 89 S. ct. 1622, 394 U.S. 847, 23 L. ed. 2d 30.

This section (U.S.C.A. Title 28-1343) grants jurisdiction in cases involving alleged denials of equal protection clause of U.S.C.A. Constitutional Amendment 14.